

CELSAT AMERICA INC.

DAVID D. OTTEN
PRESIDENT & CEO

March 14, 1996

EX PARTE OR LATE FILED

RECEIVED

MAR 14 1996

Scott Blake Harris, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

re: Ex parte Comments - ET Docket No. 95-18/Changes to MSS Rules: 1990-
2025 & 2165-2200 MHz

Dear Mr. Harris,

This letter discusses two specific proposals concerning the service rules and policies governing the new allocation of 2 GHz Mobile Satellite Service ("MSS") spectrum. The rules will be preceded by a discussion.

I Encouragement of healthy competition

The FCC should encourage and facilitate the ever growing and improving telecommunications technology. The rules should result in increased competition insofar as orbits, technology, services offered, pricing, marketing, and total capacity are concerned.

One way of promoting competition and the benefits that flow is to affirmatively encourage innovative new market entrants. Low barriers to entry are a necessary condition for competition, and to the extent that existing competitors are able to thwart new entrants, the degree of competition is reduced.

This policy could be most directly accomplished by rules that open the new bands first to qualified new entrants. Of the companies that have participated in this MSS process, this would include Celsat America, Inc. ("Celsat"). Celsat is an entrepreneurial applicant, and the only applicant to date proposing a system with very high capacity (over 100,000 voice circuits over the U.S.), low capital costs (as low as 1¢ per minute for a phone call at reasonable traffic volumes), and a handset requiring minimal changes to a CDMA PCS handset.

The existing licensees should not be permitted to freeze out potential new competitors by amassing additional spectrum. As a minimum, they should not receive any additional licenses or spectrum until they are fully utilizing their

No. of Copies rec'd
List ABCDE

8

previous authorizations.¹ Such a rule would, at present, close initial entry into these bands to AMSC, Motorola/Iridium, Loral/Qualcomm/Globalstar and TRW. It is also recommended that any entity with an attributable interest in existing MSS licensees be restricted from having control over or owning an attributable interest in a new 2 GHz MSS licensee.

By following this proposal and granting new licenses to Celsat and Comsat, the FCC would ensure that there will be at least two potential competitors in each of the viable orbits:

GEO: AMSC and Celsat
ICO: TRW and Comsat
LEO: Iridium and Globalstar

As a further element of promoting competition, the FCC's rules and policies should encourage any company that develops programs of spectrum utilization and ground service techniques that do not interfere with other companies. By contrast, any company whose technology or business practices tend towards monopolization and inflexibility should be discouraged from spectrum allocation. Celsat has designed such flexibility into its proposed satellite system. For example, its system can work on a non interfering basis in the presence of fixed microwave and certain other systems in the same spectrum. Celsat intends to cooperate with PCS systems, both CDMA and TDMA, to provide lower cost coverage of less densely populated areas including coverage to many areas that might not otherwise receive coverage for many years, if at all.

Consistent with the foregoing, Celsat proposes the following rules:

§ 25.__ Mobile satellite services spectrum aggregation limit. No MSS applicant or licensee authorized to operate in the 1990-2025/2165-2200 MHz band (including all parties under common control) shall have an attributable interest in or be under common control with an existing MSS license in other spectrum authorized for other MSS service.

§ 25.__ Ownership attribution. (Modeled after 47 C.F.R. § 20.6(d) but with a 10% attribution threshold to provide satellite entrepreneurs sufficient flexibility to raise capital.)

§ 25.__ Eligibility for licenses for frequencies__. (modeled after 47 C.F.R. 24.709)

¹ SMR and PCS rules provide precedent for this policy. 47CFR § 90.631. SMR licensees had to "load" their existing channels before receiving additional channels. Similarly, cellular licensees are restricted (pending outcome of a remanded proceeding) from acquiring more than 10 MHz of PCS spectrum significantly overlapping their service areas until the year 2000, when they can acquire an additional 5 MHz. 47 CFR §24.204.

II Financial Criteria

In its sensitivity to promote -- and above all not to impede -- competition, the FCC must consider the effects of all aspects of its rules. This is especially true when applied to small, entrepreneurial companies proposing new or commercially untested technologies, or new services or markets. In general, the FCC should establish minimum barriers to entry as the best means to encourage competition for ideas, technologies, and services. This must be balanced by the Commission's legitimate need to prevent frivolous applications or legal challenges.

With respect to financial qualification policies, the difficulty of obtaining funds for satellite ventures is so significant that the FCC need not impose *a priori* excessively stringent financial qualifications on applicants. The financial markets are likely to be better informed as well as better judges of the economic viability of satellite business proposals. If applicants are given FCC approval to move forward without unduly stringent financial qualifications, then the financial markets will efficiently and effectively screen out applicants not judged credible based on their technical and business proposal.

Even if the FCC recognizes the role of the financial markets to determine an applicant's financial viability, the FCC can take important steps that will screen out frivolous applicants and ensure a rapid, efficient licensing process. For example, once an application has been accepted for filing, the FCC can have a short filing window for competing applications. The time should be sufficient so that serious applicants can put together their own proposals, but too short to permit the mere copying and submission of the original application with only minor changes.

Another procedure that would minimize frivolous applications would be to require that the Company must have diligently developed the technical and business bases for their proposed system for at least two years prior to the filing date. Also, the FCC could look at the ownership structure of the applicant to determine to what extent the technical, business, or financial strengths or experience of the owners contributed to the overall qualifications or seriousness of the applicant.

The Commission has adopted a similar regulatory scheme in its Entrepreneurs' Block PCS rules where entrepreneurs meeting certain qualifications own and control the applicant/licensee and "passive investors" -- subject to ownership limitations -- provide much of the capital necessary to construct, launch and operate the service. 47CFR § 24.709.

Consistent with the foregoing, Celsat proposes the following additional rule:

§ 25.143 Qualifications of geostationary mobile-satellite service operating in the 1990-2025 MHz and 2165-2200 MHz bands.

- a) An applicant seeking authority to construct a geostationary mobile-satellite

system operating in the 1990-2025 MHz and 2165-2200 MHz bands shall certify in its application that it is legally, technically and financially qualified to construct, launch, and operate its satellite system and that it shall complete construction of the system as proposed in its application no later than four years after grant of the construction permit. Failure to construct within the four year period will cause the construction permit to automatically expire. An applicant must have diligently developed its proposed system concept over a period of at least two years prior to the filing date. Also, the applicant must have substantial ownership (at least 15%) by one or more passive investors who have raised capital or created companies who have raised capital of the magnitude required to construct, launch and operate the initial system for a year. The Commission may also consider the merits and value of an applicant's existing patents.

b) Requests for launch authorization must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization and station license may be included in the application for space station construction permit. However, authority to launch and operate a space station will not be granted until such station is fully constructed in compliance with paragraph (a) of this section.

I appreciate your willingness to engage in dialogue with potential applicants and other interested parties in order to reach an equitable assignment of licenses in accordance with the FCC's overall goals.

Sincerely,

A handwritten signature in black ink, appearing to read "David D. Otten", with a stylized flourish at the end.

David D. Otten

cc: William F. Caton
Rudy Baca
Brian Carter
Julius Genachowski
Don Gips
Jane Mago
David Siddall